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**ATTORNEY-CLIENT PRIVILEGED
COMMUNICATION**

RE: Tabiona Investigation

Dear Board of the Education of the Duchesne County School District:

This firm has been retained by the Board of Education of the Duchesne County School District (the "Board") to conduct an investigation regarding incidents occurring at several Tabiona High School basketball events. To clarify the nature of the retainer this firm owes duties solely to the Board and not to Tabiona High School. The Board has asked that our review be as fair, neutral and independent of any particular interests as to outcomes as possible.

This firm was provided materials by Supt. Brotherson to initiate the investigation together with a list of persons and phone numbers that he believed would be relevant to at least get started on the investigation. We expanded the number of people interviewed in an effort to be as fair to all involved as possible and to get as complete a story as an after-the-fact investigation could achieve. We have retained copies of interview notes and recordings of interviews. However, because this document may be made public the names of those interviewed will not be provided and any names will be replaced with identity markers. We should note that virtually no one that we spoke with and interviewed was reluctant to be interviewed and, to the best of our ability to discern, were forthcoming and willing to share all of the information that each possessed regarding the questions that we asked.

In addition we received notes of interviews of Tabiona personnel involved in the events from Mr. Scott Forsyth based on prior interviews that he had conducted. While we were aware of these interview notes we did not rely on them to establish any facts but did check them to see if stories remained consistent. Instead, we relied solely on the information that we gathered in the investigation process.

Given that some of the events occurred well more than a year ago it is also natural for memories to be unclear and often faded. However, we were also provided video of some of the events. The video was generally not as helpful as it may be expected because there was no audio to any of the videos. However, at least one of the videos provided decisive information to be able to determine that the narrative of events provided by Intermountain Christian School (“ICS”) were both inaccurate and misleading.

We made a point of not involving students in the investigation – with two exceptions. We felt it was absolutely necessary to get personal knowledge from two students because the allegations had been made involving them specifically and the statements made by adults regarding what occurred were not helpful. In addition, the matter being investigated was of sufficient import to make this exception.

The Events. We determined that it would be best to base our review of the events on an outline provided in a “complaint” written by someone affiliated with ICS. While we did not rely on the written complaint to establish any facts we did use it to provide an outline of relevant events. We were unable to determine who the author of the complaint was despite the fact that we inquired of those we interviewed at ICS. The complaint is written in the third person and does not explain how it was compiled. We call it a “complaint” because it is written to support an ICS narrative that we heard from employees of ICS and a non-employee affiliated with ICS who is an attorney. The complaint was written before the video was provided and thus provided a check on the accuracy of the complaint.

19 January 2018 Tabiona at ICS. The complaint asserts essentially that the Tabiona boys Varsity Basketball team stole candy out of a teacher’s 5th grade classroom desk, candy wrappers were left on the floor together with dirty plates and half-eaten meals on desks. It also claims that computers in the room had been moved and “messed with”, dry erase markers were missing and chairs were left disorderly.

The ICS affiliated individuals affirmed this story; the Tabiona affiliated individuals denied it. No photos were provided by ICS. No report was made to Tabiona by ICS at any time in 2018 or close in time to the events as one would expect if it were a serious matter to ICS. However, the nature of the actions complained of suggests an attempt to find a reason to find fault after the fact. Perhaps the nature of the actions was not serious enough to warrant any kind of immediate notice to Tabiona – but if that is the case, then it begs the question why it is now included in a complaint detailing a number of concerns that ICS has about Tabiona and its fans. We are unable to find adequate support to verify this particular allegation.

9 February 2018 ICS at Tabiona. ICS asserts that there was an officiating issue at the JV Basketball game that led to an ICS fan being ejected by the referees. ICS’s complaint against Tabiona is simply that the ICS Coach was told by “Tabiona administration” that he would have to leave the premises after being ejected. ICS asserts that the ICS fan “felt” that “it was his confronting obvious racial discrimination that led to his ejection” but he nevertheless left the building. The complaint later asserts that this kind of treatment is inconsistent with treatment by

Tabiona of its own fans who were ejected from the premises and allowed to remain in the building during the 18 January 2019 game a year later. Tabiona employees explained that they were asked to leave the gymnasium but allowed to stay in the entry-way to the building because it was a blizzard outside.

We do not see this treatment as either disparate or discriminatory. The Tabiona administration provided a legitimate non-discriminatory reason for the disparate treatment. Further, the disparate treatment is not actually “disparate” because both were ejected from the gymnasium and no longer allowed to participate in the sporting event then occurring.

If the ICS Coach was ejected due to racial discrimination then the Utah High School Athletics Association must address that issue with its officials. In our investigation we could find no basis for the allegations of racial discrimination with respect to any Tabiona fans at this game. Assertions of racial discrimination are (appropriately) taken very seriously in the law and are proper concerns. It is easy to see why the ICS Coach would be sensitive to the issue and that those affiliated with ICS would be anxious to protect him from any form of discrimination in a setting where he is a member of minority. However, because racial discrimination is taken seriously and can lead to both termination of employment and civil liability, allegations of racial discrimination should not just be tossed out without any basis or solid basis. It is too easy to assert and assume discrimination where there is none.

Irresponsible assertions of racial discrimination exacerbate the problem considerably because they lead to such assertions not being taken seriously when it actually does occur. Asserting that referees are making calls based on race without more than the fact that a person of a minority race was involved is irresponsible. We are not asserting that nothing more is involved; but ICS provided nothing more in its complaint and none of our interviews revealed anything more than the mere assumption that because the ICS Coach is of a minority race the action must be based on race.

28 February 2018 Tabiona at Wendover (at Richfield). The ICS complaint includes a Deseret News article asserting that referees had to pass through “a wall of angry parents” lined up after the game to obstruct the way of game officials. The ICS summary asserts that “it is a well known fact that the story refers to the actions of Tabiona fans.” However, the article does not appear to be accurate in all respects and relies on statements from an official, Tuckett Slade, without further corroboration. Nor does ICS support how it knows that such a “fact” is well-known. To check the accuracy of the article, we obtained a video derived from the Sevier County School District of the events in question. It can be determined from the video that the following events occurred:

As the referees walked out in front of Tabiona fans, one fan and then another appear to confront a referee. A bit later, another Tabiona fan joined the discussion with the referees but it appears that he is tempering the interaction. On video the entire person-to-person interaction with fans and a referee lasted for 8.3 seconds. There was not “a wall of angry parents” through whom the referees were required to walk as alleged in the Deseret News article. There is no evidence of a chest bump as alleged in the article by Mr Slade. There is no audio in the video so just what

was said cannot be ascertained. After the referee leaves the gymnasium the fans continue to interact with another and at one point it appears that two fans are holding another fan back.

As a result of the interaction, police were called and escorted two fans out of the venue. One of the fans was excluded from further participation in the State tournament.

The event did not involve ICS. The purpose of including the article in the complaint is, however, transparent: it is deemed to be further evidence that Tabiona fans are out of control and need to be stopped. Although ICS did nothing to fact-check the article, it was included because it was deemed to support the narrative that ICS is creating.

18 January 2019 Tabiona at ICS. The complaint asserts, and we have been able to verify, that a Tabiona fan engaged in yelling racially charged epithets at the ICS coach during the second half of the game. Exactly what was said is unclear, but it appears that the older gentleman, a grandfather to one of the players, yelled “blackie go home” to the ICS coach. When confronted by one of the ICS players that such conduct is not appropriate, this individual said: “Well, he is a negro, isn’t he?” It goes without saying that such conduct is not acceptable in our civil society. However, Tabiona administration was not notified of these actions until three (3) days after the events occurred and so could not take appropriate actions to remediate or address the issue at that time. However, we have been able to verify that the interaction between the ICS player and the Tabiona fan making the remarks was confirmed by a police officer who was at the game.

In addition, two (2) Tabiona fans were ejected by the referees from the gymnasium for conduct during the game. The exact nature of the conduct was difficult to determine but appears to have involved inappropriate comments to the referees and opposing players.

After the game while shaking hands in the “good-game-line,” the ICS coach made an inappropriate comment to a Tabiona player. According to the Tabiona player and one other person who personally witnessed the interaction, the ICS coach said in words or effect: “Son if you ever look at me like that again you will lose your life.” The Tabiona coach was informed immediately after game by several Tabiona players, including those who witnessed the interactions personally, of the threat made by the ICS coach. ICS and the ICS coach deny that he made a death threat and assert instead that he stated: “Don’t you ever disrespect an adult. I don’t know who you think you are but you are not about that. You’re not about that life.”

We are unable to determine who is telling the truth with clarity. However, it is inherently unlikely, however, that the ICS coach had such a lengthy conversation with anyone while shaking hands after the game. Video shows a quick interaction with Tabiona players and nothing more. Given that the ICS coach had earlier been the brunt of racial slurs it would be natural and understandable if he were more than a bit disturbed about the conduct occurring at the game. However, being the object of such inappropriate comments does not justify a threat of the nature made to the student – if it occurred.

In addition, ICS asserts that once again the Tabiona basketball team left a kindergarten room a mess. ICS claims that chairs were “all over the room,” dry erase markers were allegedly

missing, a reward jar located in the class with money in it went missing and markers were strewn about the room. In addition, In-n-Out Burger bag, food wrappers and soda cans were left on the floor. ICS asserts that the ICS coach's "team was once again classless and disrespectful and he once again allowed it to happen." The Tabiona coach denies that the classroom was left in such a condition.

Once again no notification was given to the Tabiona Coach or Tabiona administration at the time or soon thereafter; instead, an anonymous complaint was given that made accusations. No photos were taken to support the allegations. We are unable to determine who is telling the truth.

25 January 2019 Manila at Tabiona. Principal Camille Clegg sent to Supt. Brotherson a letter dated 28 January 2019 in which she asserted that "multiple witnesses" that adult Tabiona fan or fans called two Hispanic basketball team members "beaner" and "monkey". These terms can be understood as racial slurs.

In addition to the speaking with Principal Clegg we obtained the names of adult Manila parents who allegedly heard these slurs and interviewed them. The descriptions of exactly who said what were vague. One Manila parent indicated that she heard "someone from the other side of the gym" yell "you look like a monkey" but could not describe who said it and could not explain how she knew it was directed at a Manila player. She merely assumed that it was from a Tabiona fan and that it was directed at the Hispanic players.

A second Manila adult did not hear the "monkey" slur but hear someone from the top row in a plaid shirt on the Tabiona side yell "spic" when two Hispanic players were on the floor. No other Manila parent heard the epithet "spic" during the game. The video of the game was not clear but we could see anyone meeting that description sitting on the Tabiona side in the video.

A third Manila parent said that she did not hear either of these slurs, but reported that her son reported hearing someone yell "monkey" at the Manila team. She was seated in the middle of the gym immediately behind the Manila team.

None of the witnesses supported that anyone called Hispanic players "beaner". It is difficult to assess with certitude the claims asserted by Principal Clegg because the claim that someone yelled "beaner" is unsubstantiated and no two Manila parents heard the same thing. The descriptions are too vague to determine who said what. Where a concrete description was given, it is not substantiated by the video. All of the Manila witnesses agreed that Tabiona fans are generally "rowdy" and that Tabiona is a tough place to play.

15 February 2019 ICS at Tabiona. We have verified that during the Junior Varsity game the same individual who had made the racial slur at the 18 January 2019 game once again was present, seated on the front row in the center of the gym, and that the ICS coach and principal complained to Tabiona's principal that he should not be present, certainly not "front and center with a reserved seat," and that he mouthed the words "you are an asshole" to the ICS coach during the game. They asked that he be removed from the venue or put behind the Tabiona bench so that the ICS coach would not have to interact with him.

The Tabiona principal explained that removing the offending individual would be unwise because it would just make the situation worse. He also explained that he was seated on the front row in the center of the gymnasium because he needs oxygen and that is the only location that oxygen is available in the gym. In interviews several ICS witnesses suggested that the reasons for having the fan front-and-center were both insufficient and untrue. They were already upset. They also claim that the Tabiona principal made matters worse by suggesting that an officer should be posted in the center of the ICS fans so that matters would not appear one sided. These statements made the ICS principal and coach quite angry.

Unfortunately, the ICS complaint makes statements that suggest religious bias against “the culture.” The author of the complaint asserts that, when the ICS coach stated that he intended to “try to keep my cool” and “play this game and we’re going to get out of town,” that one of the police officers stated: “So there won’t be death threats?” The Tabiona principal then reportedly stated that he and the officer were on the LDS Church’s stake high counsel together in what ICS took to be an effort to “assure them that things would be fine.” The drafter of the complaint then states:

Clearly the message to the people of Tabiona was that they were there not to keep them in line, but to assure that [the ICS coach], the only black adult in the building, would stay in line. There was a clear trend developing of the administration, officials and even police being intimidated by a cultural force perceived to be bigger than their authority. Could it be [the Tabiona coach] and his long-time fans and supporters actually hold bigger sway on the culture and even endorse the culture because it’s thought to lead to wins?”

The drafter of the complaint accuses the Tabiona principal of implicit racial discrimination and the prevailing culture [which in context appears to be the LDS culture] of being the culprit for all discrimination that ICS perceives. Such unwarranted accusations are irresponsible. There is no basis for suggesting that the Tabiona principal made the suggestions that he did because the ICS coach is black and we found no evidence whatsoever to support such a serious allegation. That ICS is sensitive to religion-based discrimination is understandable given its status as a religious-based school in a region where religious affiliation is majority LDS, but it is not acceptable to include implicit religion-based slurs as the basis for the perceived racism in a complaint without any foundation and based on nothing but surmise driven by religious animus.

ICS states that the referees treated ICS unfairly because they called several fouls on an ICS player who is “one of the best in the state.” ICS asserts that “Tabiona got their way through the intimidation of the crowd and their coach and his bullying ways with officials (as many 1A coaches would confirm.” Such accusation reek of sour grapes. There is no evidence that the referees were intimidated into making calls. There is no evidence that the Tabiona coach engaged in bullying tactics with the referees – at least no conduct beyond the norm for coaches. ICS even asserts that the Tabiona coach was “encouraging his players to target players on the other team. He has become a model of what a coach cannot be. And yet which coach gets the technical?

The ICS coach approached the officials and stated: “Either this game is going to be called fair or we are leaving.” The ICS coaches and the drafter of the complaint fail to see why that would merit a technical foul. The implicit suggestion is once again that the ICS coach is being targeted for reasons related to discrimination. Once again such implicit suggestions are irresponsible. The concern with this treatment is not Tabiona but the referees that ICS takes to have been bullied into submission by the Tabiona fans and coach.

During the second quarter of the game an ICS player told the Tabiona crowd to “F-off” or words to that effect. The player – a key player for ICS – was given a second technical foul and excluded from the game and participation the play-in game in the State tournament. ICS admits that the student’s conduct was unacceptable but suggests that it would not have occurred if the Tabiona fans had not been swearing at him and taunting him. The player claims (through the drafter of the complaint) that a woman on the Tabiona side said: “Look at 23’s face, he is so ugly.” Because the video does not include audio it is impossible to know what the Tabiona fans said. If a Tabiona fan engaged in such conduct, then it is extremely immature and unacceptable. It does not, however, justify a player in responding in such a manner.

At the end of the half the ICS coach had to be forcibly restrained by the ICS principal and Board President. The ICS coach was very upset at what he perceived to be the treatment of one of his key players by the Tabiona crowd and the officials and the prior racism directed at him. It is to their credit that they did what they could to keep the matter under control as best that they could. However, events were quickly spiraling out of control. Two ICS patrons report that they heard a Tabiona fan “sitting in the front row directly across from the ICS bench” (and this *not* the same individual who had previously stated racist remarks) and use the N-word and yell: “Get the F-out of here” repeatedly. ICS asserts that the video shows the Tabiona coach standing by the scorer’s table and “laughing at the escalation of the frustration from [the ICS coach].” We were unable to verify such allegations even after viewing the video several times. However, if the N-word and other comments were made then they were out-of-line and beyond the bounds of civil conduct.

The teams repaired to their respective locker-rooms at half-time. The ICS complaint alleges that the Tabiona coach came around the corner yelling down the hall and motioning to the ICS end of the hall. It asserts that the Tabiona coach “walked past his locker room and proceeded toward [the ICS coach]. At this point, Mr. K, father of K [an ICS father and son who is a player on the ICS team] stepped in front of [the ICS coach] to defend him. Mr. L[...] and soon [the ICS principal] held back Mr. K. assuring him that fight wasn’t worth it....” Mr. F[...] was yelling to [Tabiona’s assistant principal] to get [the Tabiona coach] into the lacker room. After doing so [the Tabiona assistant principal] literally stood with his foot on the door to keep the [the Tabiona coach] in the locker room”

We have quoted the ICS complaint at length to show the detail and surety with which the allegations as to what occurred have been asserted. We have also quoted these statements carefully because we were able to verify that not a single one of these assertions is true. In fact, the opposite is true. After the ICS complaint was written a video of the hallway where these incidents occurred was located. We were able to verify that the Tabiona coach never yelled down the hall, never approached the ICS end of the hall or walked toward the ICS coach, and in fact

never interacted with the ICS coach in the hallway during half-time. To the contrary, the video shows that the father of the ICS player (who should not have been permitted into the locker room or hallway by ICS) yelled down the hallway toward Tabiona, stalked down the hall in an aggressive manner toward the Tabiona locker room and attempted to accost the Tabiona coach. It is true that the father of the ICS player, a very large individual (much taller and larger than anyone else in the hall) physically lunged at the Tabiona coach and had to be restrained from accosting the Tabiona coach. Legally the ICS father committed an assault because any reasonable person would have feared for their safety given such conduct. Further, there is no evidence that the Tabiona coach had to be kept in the locker room. It is true that the Tabiona assistant principal stood outside the Tabiona locker room door after the incident occurred.

CONCLUSION

The fact that events alleged in the complaint by ICS at the 15 February 2019 game that we could verify by video were so different from those that actually occurred raised suspicions as to the accuracy of the remaining assertions made in the complaint. However, we were able to verify that racial slurs were yelled at the ICS coach on at least one occasion and probably also at Manila basketball players. We did not rely on the complaint for any fact, but we were able to interview witnesses and watch videos that allowed us to make these conclusions with certitude.

The Board of Education has not asked us to suggest ways to ameliorate or respond to the obvious tension between Tabiona and ICS. We therefore do not make any suggestions but would be happy to discuss such issues if the Board of Education so directs.

We remind Board of Education members that this communication is attorney-client privileged and that the contents of this communication should not be communicated outside of the Board Members (the Board also includes the Superintendent of Schools as an ex officio Board member) unless and until the Board votes in open meeting to waive the attorney-client privilege.

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